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CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CORY SPENCER, an individual;
DIANA MILENA REED, an
individual; and COASTAL
PROTECTION RANGERS, INC., a
California non-profit public benefit
corporation,

Plaintiffs.

CASE NO. 2:16-cv-02129-SJO (RAOx)

**DECLARATION OF KURT A.
FRANKLIN IN SUPPORT OF
PLAINTIFFS' SUPPLEMENTAL
OPPOSITIONS TO DEFENDANTS'
MOTIONS FOR SUMMARY
JUDGMENT**

Case No. 2:16-cv-02129-SJO (RAOx)

DECLARATION OF KURT A. FRANKLIN IN SUPPORT OF PLAINTIFFS'
SUPPLEMENTAL OPPOSITIONS TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

1
2 v.

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON,
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

12 Defendants.
13

14 I, Kurt A. Franklin, declare as follows:

15 1. I am an attorney duly admitted to practice before this Court. I am a
16 partner with Hanson Bridgett LLP, attorneys of record for Plaintiffs CORY
17 SPENCER, DIANA MILENA REED, and COASTAL PROTECTION RANGERS,
18 INC. I have personal knowledge of the facts set forth herein, except as to those
19 stated on information and belief and, as to those, I am informed and believe them to
20 be true. If called as a witness, I could and would competently testify to the matters
21 stated herein.

22 2. On July 12, 2017, I deposed Captain Tony Best, who the City of Palos
23 Verdes Estates had designated as the Person Most Knowledgeable on several topics.
24 During Captain Best's deposition, he mentioned several documents that had not
25 been produced during discovery, though they were relevant to Plaintiffs' discovery
26 requests. Specifically, the City failed to produce video footage of two surfing
27 events that occurred at Lunada Bay on Martin Luther King, Jr. Day (MLK Day
28

1 Event) in 2014 and 2017. The City also withheld from production an operations
2 plan memorandum that was issued to all patrol personnel in advance of the 2017
3 MLK Day Event and a separate memorandum that was issued to Captain Mark
4 Velez from Detective Charles Reed regarding a failed undercover surfer operation.

5 3. My co-counsel in this matter, Victor Otten, emailed counsel for the
6 City on July 20, 2017, in an effort to obtain the above-mentioned relevant items that
7 were missing from the City's production. Mr. Otten again followed up with the City
8 on July 28, 2017 regarding production of these (and other) outstanding items. A
9 true and correct copy of Mr. Otten's July 20, 2017 and July 28, 2017 emails are
10 attached as **Exhibit 1**.

11 4. Jacob Song, counsel for the City, responded on July 28, 2017, and
12 stated that "City staff have not yet been able to locate the specified items from your
13 July 20, 2017 correspondence" but that they "continue to search, and we will
14 provide such records when they are located." A true and correct copy of Mr. Song's
15 July 28, 2017 reply is attached as **Exhibit 2**.

16 5. On August 3, 2017, Mr. Song produced via email the January 17, 2014
17 memorandum to patrol personnel from Captain Tony Best regarding the 2014 MLK
18 Day Event. A true and correct copy of this January 2014 memorandum is attached
19 as **Exhibit 3**. Although this document has been marked "CONFIDENTIAL" (City
20 Bates Nos. CITY023466-CITY023473), counsel for the City agreed via email on
21 October 17, 2017 to remove the "Confidential" designation.

22 6. As a result of an error in the City's July 12, 2017 document production,
23 which was ultimately discovered by a paralegal in my office, Samantha Hubley, we
24 did not receive 479 pages of documents from the City until August 15, 2017. *See*
25 Decl. S. Hubley, filed herewith. The City claimed its failure to provide a full
26 production was a mistake. This was 15 days after Plaintiffs opposed the City's
27 summary judgment motion.

1 7. Among the missing documents that were produced in August by the
2 City was a May 21, 2015 memorandum to the Mayor and City Council from Chief
3 Kepley regarding “Localism in Lunada Bay.” Although this document has been
4 marked “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (CITY022991-
5 CITY022992), counsel for the City agreed via email on October 17, 2017 to remove
6 the “Confidential” designation. A true and correct copy of this May 21, 2015
7 Memorandum is attached as **Exhibit 4**.

8 8. Also included in the City’s August 15, 2017 production was a
9 December 31, 2015 email from Chief Kepley to the entire Palos Verdes Estates
10 Police Department (“PDALL”) and City Manager Anton Dahlerbruch. Although
11 this document has been marked “CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” (CITY023007-CITY023009), counsel for the City agreed via email on
13 October 17, 2017 to remove the “Confidential” designation. A true and correct copy
14 of Chief Kepley’s December 31, 2015 email is attached as **Exhibit 5**.

15 9. Also included in the City’s August 15, 2017 production was a July 12,
16 2016 email from the City’s public relations consultant, Dennis Wolcott of The
17 Wolcott Company, to Chief Kepley and City Manager Dahlerbruch. Although this
18 document has been marked “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 (CITY023081-CITY023082), counsel for the City agreed via email on October 17,
20 2017 to remove the “Confidential” designation. A true and correct copy of this July
21 12, 2016 email is attached as **Exhibit 6**.

22 10. Also included in the City’s August 15, 2017 production was a June 19,
23 2014 email from Joe Mendoza (City Senior Management Analyst/Code
24 Enforcement) to City PMK Sheri Repp-Loadsman (City Deputy City Manager),
25 Mike Ross (City Building Officer), Stacey Kinsella (City Planner), and Pete Tepus
26 (City Maintenance Foreman). Although this email is marked “CONFIDENTIAL”
27 (CITY023453-CITY023454), counsel for the City agreed via email on October 17,
28

1 2017 to remove the “Confidential” designation. A true and correct copy of this June
2 19, 2014 email is attached as **Exhibit 7**.

3 11. Also included in the City’s August 15, 2017 production was an August
4 12, 2015 email from Chief Kepley to Mayor Goodhart regarding “Surf Gangs.”
5 Although this email is marked “CONFIDENTIAL – ATTORNEYS’ EYES ONLY
6 (CITY022993-CITY022994), counsel for the City agreed via email on October 17,
7 2017 to remove the “Confidential” designation. A true and correct copy of this
8 August 12, 2015 email is attached as **Exhibit 8**.

9 12. On August 15, 2017, the City also produced an April 19, 2016
10 Memorandum from Detective Charles Reed to Captain Mark Velez regarding
11 “Undercover Surfer Operation.” Although this email is marked “CONFIDENTIAL”
12 (CITY023013-CITY023014), counsel for the City agreed via email on October 17,
13 2017 to remove the “Confidential” designation. A true and correct copy of this
14 April 19, 2016 Memorandum is attached as **Exhibit 9**.

15 13. The City’s July 12, 2017 production (referenced above) occurred two
16 days before the City’s motion for summary judgment was filed, during which time I
17 was away from my office in Southern California taking City PMK depositions
18 (Best, Dahlerbruch, and Repp-Loadsman). The production consisted of 1,930 pages
19 of documents. The City produced an additional 163 items on July 14, 2017, the
20 same day it filed for summary judgment. These productions were made via an FTP
21 cite link that was sent by email from Jacob Song, counsel for the City, to myself and
22 others in my office. Also on this day, Plaintiffs were also meeting with the
23 individual defendants on their planned motions for summary judgment pursuant to
24 Local Rule 7-3. Because my office was in the midst of compelling discovery from
25 other parties and preparing Plaintiffs’ responses to eight summary judgment
26 motions, we were unable to closely review the nearly 2,100 pages of the late-
27 produced documents by the City in advance of responding to the City’s motion.

1 14. Included in the City's July 12, 2017 production was an email dated
2 September 24, 2015, from Chief Kepley to City Manager Dahlerbruch, Captains
3 Best and Velez, and Sergeant Barber. The subject of the email is entitled "Update
4 on Surfing Localism," and the email states, in part: "While much more work needs
5 to be done, she [Deputy District Attorney Angie Christides, of the LADA's Office,
6 Hardcore Gang Division] believes that the future crimes related to surfer localism
7 can, and should, be prosecution with gang enhancements. This is welcome news! I
8 firmly believe that if we prosecuted only one case in this fashion, with publicity, it
9 would be the first and strongest effort to date to dissuade others from committing
10 similar offenses." Although this email is marked "CONFIDENTIAL –
11 ATTORNEYS' EYES ONLY (CITY018158), counsel for the City agreed via email
12 on October 17, 2017 to remove the "Confidential" designation. A true and correct
13 copy of this September 24, 2015 email is attached as **Exhibit 10**.

14 Also included in the July 12, 2017 production was a Memorandum from
15 Sergeant Steve Barber to police personnel, dated January 16, 2017, following the
16 MLK Day Event, regarding "Surfer Protest." As part of Plaintiffs' section 1983
17 Claim against the City, Plaintiffs allege that the City directly discriminates against
18 outsiders, including specifically women and other protected categories. In the
19 January 16, 2017 Memorandum, Sergeant Barber calls subordinate Officer Aaron
20 Belda a "roided-out freak of a human being" who "stalked the cliffs for any female
21 who would give him attention." Although this documents is marked
22 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" (Bates No. CITY018658-
23 CITY018659), counsel for the City agreed via email on October 18, 2017 to remove
24 the "Confidential" designation. A true and correct copy of this document is attached
25 as **Exhibit 22**. *See also* Plaintiffs' Application for Leave to File Under Seal. During
26 this event, Coastal Protection Ranger Chief Operating Officer Alicia Apostol
27 complained about being intimidated by Bay Boys and the police response. *See*,

Paragraph 13 to Decl. Alicia Apostol in Supp. of Pltfs.’ Opp’n to Defs. City of Palos Verdes Estates and Chief Kepley’s Motion for Summary Judgment or, in the Alternative, Summary Adjudication. Dock. No. 304.

15. On August 28, 2017, the Daily Breeze published an online article entitled “Palos Verdes Estates police chief retires after 4 months on leave.” I downloaded this article from the Daily Breeze’s website at:

<http://www.dailybreeze.com/2017/08/28/palos-verdes-estates-police-chief-retires-after-4-months-on-leave/>. A true and correct copy of this article is attached as

Exhibit 11. Related to this, on September 8, 2017, counsel for the City confirmed that Chief Jeff Kepley no longer worked for the City and that Captain Tony Velez was now acting in the Chief of Police position. *See* Pltfs.’ Suggestion Under FRCP 25(d) on Record to Substitute Official Named in His Representative Capacity Due to Resignation, Dock. No. 455, and City and Chief Kepley’s Response to Pltfs.’ Suggestion, Dock. No. 466.

16. On September 13, 2017, this Court ordered Defendant Papayans to produce by September 22, 2017, “responsive cellular phone records that were produced to Defendant Papayans’ criminal defense attorney by the prosecution in his pending criminal matter . . . If counsel learns that he will be unable to obtain the records from Defendant’s criminal defense attorney, counsel shall inform Plaintiffs’ counsel and the Court immediately.” (Civil Minutes, Sept. 13, 2017, Dock. No. 452, at p. 2.) On September 22, 2017, Defendant Papayans produced 33 pages of cell phone records via email through his counsel, which I received. The following day, my co-counsel, Victor Otten, emailed counsel for Defendant Papayans, Peter Haven, and stated that “it seems that there are still records missing.” I was copied on this email. Mr. Haven responded on September 26, 2017, and stated that “Prior to the production, his defense counsel told me those were all the cell phone records they had. I conferred with them again yesterday, after receiving your email, which I

1 forwarded to them. They again told me that those were all the records they had. I
2 produced everything they gave me. I did not withhold anything.” I was also copied
3 on this email from Mr. Haven to Mr. Otten. Mr. Otten responded via email the same
4 day and stated that the District Attorney confirmed that she produced 502 pages to
5 Mr. Papayans’ criminal lawyer but only 9 pages from that time period were
6 produced. He asked Mr. Haven to produce the missing 493 pages. I also received
7 this email. Mr. Haven responded on September 29, 2017 and stated that his client’s
8 criminal defense counsel produced additional documents to him that he was
9 reviewing and planned to produce them later that day. A true and correct copy of
10 this email string is attached as **Exhibit 12**.

11 17. On October 2, 2017, counsel for Defendant Papayans produced 502
12 pages of previously missing text messages from his client. I received this
13 production via email and the texts were attached as a PDF document. A true and
14 correct copy of relevant, redacted portions of Defendant Papayans’ text messages is
15 attached as **Exhibit 13**. For the Court’s reference, the following phone numbers are
16 associated with relevant persons in this matter:

| Individual | Last 4 Digits |
|---------------------|---------------|
| Sang Lee | 0699 |
| Michael R. Papayans | 1103 |
| Charles Mowat | 9561 |
| Brant Blakeman | 7934 (cell) |
| Brant Blakeman | 3917 (home) |
| Michael Thiel | 3207 |
| Brandon Lamers | 0907 |

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26 18. On September 12, 2016, Plaintiffs served a set of Requests for
27 Production of Documents to Defendant Blakeman. As is relevant, Request No. 9
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1 sought all documents referring or related to efforts to keep people from surfing
2 Lunada Bay and Demand No. 10 sought texts with anyone who surfs or has surfed at
3 Lunada Bay referring or related to efforts to keep anyone from surfing there.

4 19. Defendant Blakeman admitted in the course of discovery that he
5 possessed a City-owned cell phone which he used for personal purposes from at
6 least October 1, 2014 through April 30, 2016. Attached as **Exhibit 14** is a true and
7 correct copy of Plaintiff Cory Spencer's Requests for Admission, Set One, to
8 Defendant Blakeman. Attached as **Exhibit 15** is a true and correct copy of
9 Defendant Blakeman's Response to Plaintiff Cory Spencer's Requests for
10 Admission, Set One.

11 20. The City of Palos Verdes Estates paid the phone bill associated with the
12 cell phone used by Defendant Blakeman from at least October 1, 2014 through April
13 30, 2016. Attached as **Exhibit 16** is a true and correct copy of Plaintiff Cory
14 Spencer's Second Set of Requests for Admission to Defendant City of Palos Verdes
15 Estates. Attached as **Exhibit 17** is a true and correct copy of Defendant City of
16 Palos Verdes Estates' Response to Plaintiff Cory Spencer's Second Set of Requests
17 for Admission.

18 21. At some point after Defendant Blakeman's November 21, 2016
19 deposition, the City came to possess the cell phone that had been in use by
20 Defendant Blakeman. Subsequently, the City produced cell phone bills for the City-
21 owned cell phone used by Blakeman, which were addressed to Captain Mark Velez.
22 And, on June 1, 2017, the City produced documents (including text messages and
23 photographs) that had been stored on the phone in use by Defendant Blakeman, and
24 which were responsive to Plaintiffs' September 12, 2016 discovery requests to
25 Defendant Blakeman. But, the City did not produce an extraction report for any of
26 the City-owned phones. Similarly, it did not produce an extraction report for any
27 elected official's phones that it may have reviewed. Indeed, the City never

1 identified the custodians from which it performed cell phone, iPad, or computer
2 forensic searches. This is true even though on September 26, 2016, City Manager
3 Anton Dahlerbruch issued a memorandum to the mayor and the city council
4 members stating this, emphasizing it with high priority: “City Council members
5 routinely use their private cell phones for conducting City business. This merges
6 personal information with City information when discovery of records is necessary.”
7 Attached as **Exhibit 23** is a true and correct copy of this memorandum, Bates No.
8 CITY019699-CITY019703 (*see* page 3 of 5, No. 3). Although this memorandum is
9 marked “CONFIDENTIAL,” counsel for the City agreed via email on October 18,
10 2017 to remove the “Confidential” designation.

22. I reviewed Defendant Papayans' text messages closely (Exhibit 13) and determined that he and his co-conspirators, including Charlie Mowat and Michael Thiel, sent relevant and incriminating text messages to Defendants Blakeman and Sang Lee but none of these text messages were produced by either Defendant Blakeman or Lee during discovery. (*See* Ex. 13, above, at MP 00212, MP 00219, MP 00221, MP 00224, MP 00225, MP 00226.) Similarly, Defendants Blakeman and Lee exchanged text messages with each other on March 25, 2016 and April 12, 2016, but neither Defendant produced these texts during discovery. (*See* Decl. Wolff ISO Sanctions Against Defts. Charlie Ferrara, Frank Ferrara, and Sang Lee, Dock. No. 470-1, at p. 15.)

At his deposition, Defendant Papayans testified that he did not recall ever participating in any text messages talking about outsiders coming to Lunada Bay or anything like that. A true and correct copy of relevant portions of his deposition transcript is attached as **Exhibit 24**.

25 At his deposition, Defendant Blakeman testified that he only used his cell
26 phone to receive texts from his wife, not others. A true and correct copy of relevant
27 portions of his deposition transcript is attached as **Exhibit 25**.

23. On September 11, 2017, I learned that previously-dismissed Defendant N.F.'s cell phone was still in the possession, custody, and control of the Palos Verdes Estates Police Department. N.F.'s attorney, Mark Fields, informed me and my co-counsel via email on that date, a true and correct copy of which is attached as **Exhibit 18**. Due to City's apparent failure to properly preserve N.F.'s phone, Plaintiffs were unable to access the contents of the phone (through N.F.'s forensic expert) as of October 18, 2017. A true and correct copy of an October 16, 2017 email from Mark Fields explaining why the data is not accessible is attached as **Exhibit 19**.

24. On September 26, 2017, Defendant Angelo Ferrara produced an extraction report corresponding with his cell phone. True and correct copies of relevant and redacted portions of Angelo Ferrara's extraction report are attached as **Exhibit 20**.

25. On May 5, 2017, Defendant Sang Lee produced documents that he received from his cell phone carrier, T-Mobile, in response to a subpoena of his cell phone records. The records produced by T-Mobile contain an “Important Notice Regarding Timestamp on Call Records” at the end of the production, on page 0582. This “Important Notice” explains that the T-Mobile cell phone records “deliver[] historical call detail records in Coordinated Universal Time (‘UTC’)” which “is not a time zone, but a time standard that is the basis for civil time and time zones worldwide. UTC operates independently of country specific time zones and/or seasonal adjustments, such as Daylight Savings Time.” True and correct copies of relevant and redacted portions of Defendant Lee’s cell phone records are attached as **Exhibit 21**. In converting from UTC to Pacific Standard Time, 8 hours must be subtracted from the UTC time (or 7 hours when converting to Pacific Daylight Time). *See* Expert Report of Andrew Crain at p. 8, attached as **Exhibit 26**.

1 26. On September 25, 2017, Surfer Magazine published an article by
2 Ashtyn Douglas, entitled “Battle for the Bay.” The article states, “As for the
3 defendants in both cases, only one responded to my request for comment. In a long
4 email, he told me that he grew up surfing in an era when surfers ‘were anything but
5 the little whiners they are now. We used to get heckled from sun up to sun down and
6 it molded us into the people we are now. Now someone says one little thing and
7 guys are calling cops, lawyers, newscasters, making Facebook pages in utter
8 uproar.’ He went on to say that ‘outsiders will get nothing except maybe a shitty one
9 or two... so good luck. Wouldn’t any normal, self-respecting dude just go check
10 elsewhere? Everyone has a local break and to see it disrespected and slutted out
11 everywhere is just plain f--king dumb.’ ‘Sign of the times,’ the email concluded.”
12 This article is available online at <http://www.surfer.com/features/battle-for-the-bay/>.
13 A true and correct copy of this September 25, 2017 article is attached as **Exhibit 27**.

14 27. At his deposition, Defendant Alan Johnston acknowledged that the
15 quotes in September 25, 2017 Surfer Magazine article attributed to a defendant in
16 this action were made by him. A true and correct copy of relevant portions of
17 Defendant Johnston's deposition testimony is attached as **Exhibit 28**.

18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct.

20 Executed on this 18th day of October, 2017, at San Francisco, California.

/s/ Kurt A. Franklin
Kurt A. Franklin